



CENTER FOR FOOD SAFETY

May 19, 2021

SUBMITTED VIA ONLINE FORM

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667
RE: Freedom of Information Act Request

To the U.S. Environmental Protection Agency (EPA) FOIA Officer:

The Center for Food Safety (CFS) is a 501(c)(3) nonprofit, public interest and environmental advocacy organization that works to address the adverse health and environmental impacts of our industrial food system, while at the same time advocating for a more sustainable future for our food. CFS has a long history of promoting sustainable farming practices and advocating and litigating to ensure and improve federal regulations and oversight of offshore aquaculture in U.S. Federal waters. Consistent with this mission and pursuant to 40 C.F.R. § 2.107(l)(2)(i) and the Freedom of Information Act (FOIA), 5 U.S.C. § 552, CFS respectfully requests the following information:

- (1) All records, from January 1, 2016 to present, related to EPA's comments on the National Ocean and Atmospheric Administration (NOAA)'s draft Programmatic Environmental Impact Statement (PEIS) for the Pacific Islands Aquaculture Management Program, 0648-XA867,¹ in the May 7, 2021 notice in the Federal Register. See 86 Fed. Reg. 24616 (May 7, 2021) (citing EIS No. 20210048).²
- (2) All communications, from January 1, 2016 to present, between EPA and NOAA's National Marine Fisheries Service (NMFS) Pacific Islands Regional Office (PIRO) and the Western Pacific Fishery Management Council (WPFMC) concerning the development and implementation of a federal aquaculture management program in the waters of the U.S. Exclusive

¹ See Docket No. NOAA-NMFS-2021-0044, <https://www.regulations.gov/docket/NOAA-NMFS-2021-0044>; Docket No. NOAA-NMFS-2021-0044-0003, <https://www.regulations.gov/document/NOAA-NMFS-2021-0044-0003>.

² Available at <https://www.govinfo.gov/content/pkg/FR-2021-05-07/pdf/2021-09688.pdf>.

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Economic Zone (EEZ or Federal waters) in the Pacific Islands Region (PIR), and consultation by EPA on the draft PEIS 0648-XA867.³ See 86 Fed. Reg. 24616 (citing EIS No. 20210048).⁴

“All records” includes, but is not limited to, agreements, contracts, correspondence, minutes, memoranda, maps, plans, drawings, emails, reports, databases, and notes. This request includes all documents that have ever been within your custody or control, whether they exist in agency “working,” investigative, retired, electronic mail, or other files currently or at any other time.

This request is being sent to the EPA FOIA officer with the understanding that it will be forwarded to other officers, offices, or departments with information pertinent to this request.

REQUEST FOR FEE WAIVER

CFS requests that pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), NMFS waive all fees in connection with the procurement of this information. As demonstrated below, the nature of this request meets the test for fee waiver as expressed in the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(A)(iii).

In deciding whether the fee waiver criteria is satisfied, CFS respectfully reminds NMFS that FOIA is inclined toward disclosure and that the fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations. See 132 Cong. Rec. S. 14270-01, (statement of Sen. Leahy) (“[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.”). Furthermore, the Ninth Circuit Court of Appeals has interpreted this fee waiver section broadly, holding that the section “is to be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy).

I. THE PRESENT DISCLOSURE IS IN THE PUBLIC INTEREST BECAUSE IT WILL SIGNIFICANTLY CONTRIBUTE TO PUBLIC UNDERSTANDING OF THE OPERATIONS OR ACTIVITIES OF GOVERNMENT.

The requested disclosure will contribute to public understanding of the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii).

³ See *supra* p. 1 n.1; see also <https://www.fisheries.noaa.gov/action/potential-aquaculture-management-program-pacific-islands>.

⁴ See *supra* p. 1 n.2.

A. The subject of the disclosure concerns “the operations and activities of the government.”

The requested information pertains to EPA’s regulatory authority and oversight of environmental impact statements (EISs) issued by other federal agencies under section 309(a) of the Clean Air Act and the National Environmental Policy Act (NEPA), which includes making public the agency’s comments on EISs, such as the NMFS PIRO and WPFMC’s draft PEIS analyzing the direct, indirect, and cumulative impacts on the human, physical, and biological environment from establishing an offshore aquaculture management program in the Federal waters of the Pacific Islands. It is irrefutable that EPA’s review and consultation with NMFS in regards to NMFS’s draft PEIS on the effects to the human environment from the development and implementation of an aquaculture management program in the PIR is clearly identifiable operation of the government. This disclosure will demonstrate to the public at large the nature of EPA’s environmental review and communications with NMFS in considering NMFS’s draft PEIS as well as the human health, environmental, and socioeconomic impacts that a federal offshore aquaculture program could have in the Federal waters in the PIR.

B. The disclosure is “likely to contribute significantly to public understanding” of government operations or activities.

As discussed in the previous section, the present disclosure will provide the public a better understanding of the nature of the EPA’s environmental review and consultation process when considering the NMFS PIRO and WPFMC’s draft PEIS and analyzing the impacts on the human, physical, and biological environment if an aquaculture management program was established in the Federal waters of the PIR. The requested documents and communications are not already public, and will help concerned members of the public understand EPA’s process for evaluating and commenting on other agencies environmental impact statements under the Clean Air Act and NEPA, such as NMFS’s draft PEIS for an offshore aquaculture program in the PIR.

CFS is a tax-exempt, nonprofit membership organization founded with offices in San Francisco, California; Portland, Oregon; and Washington, D.C. CFS represents more than 975,000 farmer and consumer members, in every state throughout the country. Since its inception in 1997, CFS’s mission has been to empower people, support farmers, and protect the environment from the harmful impacts of industrial agriculture. Every day CFS staff works to address the adverse health and environmental impacts of our industrial food system, while at the same time advocating for a more sustainable future for our food. When we think of “food safety” we mean it in a broad sense: food that is safe for people, but also safe for the planet and workers.

Accordingly, CFS’s program activities cover the gamut of all aspects of the food and agriculture system including but not limited to: foodborne illness; truth in food labeling; ocean aquaculture and fisheries issue; livestock pollution; soil protection; industrial monocultures; new and emerging food technologies; and many more. A cornerstone of this mission is to advocate for thorough, science based safety assessments of agricultural products and technologies. As part of its broader mission one of CFS’s flagship programs has always been addressing the adverse

environmental, health, and socioeconomic impacts of offshore industrial aquaculture. CFS has multiple staff—scientific, policy, and legal—that work on this program. Due to the nature of CFS’s organizational activities, it frequently employs FOIA’s provisions in record requests to EPA to monitor EPA and other federal agencies’ decision-making with regards to regulating and overseeing ocean aquaculture operations in the EEZ, and to open the operations and activities of EPA to public scrutiny and contribute significantly to the public’s understanding of the agency’s actions as it relates to its review and consultation of NMFS’s draft PEIS on establishing a federal aquaculture management program in the PIR. Consequently, CFS is highly qualified to fully comprehend, analyze, and organize the requested records.

In addition, CFS combines multiple tools and strategies in pursuing its mission, including public and policymaker education, outreach, and campaigning. For example, CFS disseminates a wide array of informational materials to government agencies, lawmakers, nonprofits, and the general public regarding the effects of industrial food production, aquaculture, agricultural products, and pesticides, on human health and the environment. These educational and informational materials include, but are not limited to, news articles, policy reports, white papers, legal briefs, press releases, newsletters, product guides, action alerts, fact sheets, and our website. CFS often has provided expert testimony to policymakers on the issues including the adverse impacts and risks of industrial aquaculture. Staff members regularly monitor the Federal Register and submit comments to EPA and other regulatory agencies via the public notice-and-comment process. CFS also regularly sends out action alerts to its members, encouraging them to participate in the notice-and-comment process, or to submit letters to government officials related to the oversight of offshore aquaculture and other issues affecting CFS’s mission to build a sustainable food system. When necessary, CFS also engages in public interest litigation to address the impacts of industrial food production and aquaculture on its members, the environment, and the public interest. Accordingly, CFS is an effective vehicle to disseminate information to the general public about EPA’s regulatory authority and oversight of NMFS’s draft PEIS analyzing the human health and environmental impacts of a potential offshore aquaculture management program in the Federal waters in the PIR.

Simultaneously, this FOIA request will help CFS fulfill its well-established function of public oversight of government action. Public oversight of agency action in particular is a vital component in our democratic system and is the bedrock upon which the FOIA stands.

II. OBTAINING THE INFORMATION IS OF NO COMMERCIAL INTEREST TO CFS.

CFS is a 501(c)(3) nonprofit environmental advocacy organization that works to address the impacts of our food production system on human health, animal welfare, and the environment. CFS works to achieve its goals through grassroots campaigns, public education, media outreach, and litigation. Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. *See, e.g.,* OMB Fee Guidelines, 52 Fed. Reg. 10017-18. Such interests are not present in this request. In no manner does CFS seek information from EPA for commercial gain or interest. CFS respectfully files this FOIA request pursuant to its goal of educating the general public on the impacts of ocean

aquaculture in Federal waters in the PIR. Upon request and free of charge, CFS will provide members of the public with relevant information obtained from EPA.

Based upon the foregoing, CFS requests that this FOIA be classified within EPA's fee waiver category and that EPA send the requested information as required by law. If the responsive records are voluminous please contact us to discuss the proper scope of the response. If any exemption from FOIA's disclosure requirement is claimed, please describe in writing the general nature of the document and the particular legal basis upon which the exemption is claimed. Should any document be redacted, please indicate the location of the redaction through the use of black ink. Please provide any and all non-exempt portions of any document that may be partially exempt due to some privilege as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

Please send all materials to tyundt@centerforfoodsafety.org. Electronic materials are preferred but if records must be mailed, please send to the 303 Sacramento Street, 2nd Floor San Francisco, CA 94111. Please email me at tyundt@centerforfoodsafety.org or call me at 415-826-2770 or 541-419-2344 if you have any further questions about this request. Thank you for your attention to this request.

Sincerely,



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